

2004

The State of Utah v. David Scott Anderson : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Debra M. Nelson; C. Bevan Corry; Salt Lake Legal Defender Association; Counsel for Defendant/Appellant.

Matthew D. Bates; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Kimberly A. Crandall; Salt Lake District Attorney's Office; Counsel for Plaintiff/Appellee.

Recommended Citation

Brief of Appellant, *Utah v. Anderson*, No. 20041095 (Utah Court of Appeals, 2004).
https://digitalcommons.law.byu.edu/byu_ca2/5438

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 DAVID SCOTT ANDERSON, : Case No. 20041095-CA
 :
 Defendant/Appellant. :

BRIEF OF APPELLANT

Appeal from a final judgment of conviction for Theft, a third degree felony, in violation of Utah Code Ann. § 76-6-404 (2003), entered by the Honorable Robin W. Reese, Third District Court, Salt Lake County, Utah. Appellant is incarcerated.

DEBRA M. NELSON (9176)
C. BEVAN CORRY (6517)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Attorneys for Defendant/Appellant

Assistant Attorney General
MARK L. SHURTLEFF (4666)
UTAH ATTORNEY GENERAL
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854
Attorneys for Plaintiff/Appellee

FILED
UTAH APPELLATE COURTS
JUL 15 2005

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 DAVID SCOTT ANDERSON, : Case No. 20041095-CA
 :
 Defendant/Appellant. :

BRIEF OF APPELLANT

Appeal from a final judgment of conviction for Theft, a third degree felony, in violation of Utah Code Ann. § 76-6-404 (2003), entered by the Honorable Robin W. Reese, Third District Court, Salt Lake County, Utah. Appellant is incarcerated.

DEBRA M. NELSON (9176)
C. BEVAN CORRY (6517)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Attorneys for Defendant/Appellant

Assistant Attorney General
MARK L. SHURTLEFF (4666)
UTAH ATTORNEY GENERAL
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, Utah 84114-0854
Attorneys for Plaintiff/Appellee

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE ISSUE, STANDARD OF REVIEW, PRESERVATION	1
TEXT OF RELEVANT STATUTES AND CONSTITUTIONAL PROVISIONS	2
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT	
WHERE A TRIAL COURT HAS ACTED ON ITS ORDER OF JUDGMENT AND ENTERED IT INTO THE RECORD, THE COURT UPON REVOKING PROBATION CANNOT INCREASE THE SENTENCE ORIGINALLY IMPOSED.	6
CONCLUSION	14
Addendum A: Judgment	
Addendum B: Text of Relevant Statutes and Constitutional Provisions	
Addendum C: District Court Docket in Case No. 041901010	
Addendum D: Judgment in Case No. 041901010	

TABLE OF AUTHORITIES

Page

CASES

<u>Ex parte Lange</u> , 85 U.S. (18 Wall.) 163 (1873)	10, 12
<u>North Carolina v. Pearce</u> , 395 U.S. 711 (1969)	12
<u>State Farm Fire & Casualty Co. v. Sundance Dev. Corp.</u> , 2003 UT App 367, 78 P.3d 995	10
<u>State v. Curry</u> , 814 P.2d 1150 (Utah Ct. App. 1991)	7, 8, 9
<u>State v. Galli</u> , 967 P.2d 930 (Utah 1998)	14
<u>State v. Gibbons</u> , 779 P.2d 1133 (Utah 1989)	13
<u>State v. Helms</u> , 2002 UT 12, 40 P.3d 626	14
<u>State v. Maestas</u> , 2002 UT 123, 63 P.3d 621	10
<u>State v. McCovey</u> , 803 P.2d 1234 (Utah 1990)	13
<u>State v. Montoya</u> , 825 P.2d 676 (Utah Ct. App. 1991)	6
<u>State v. Perez</u> , 2002 UT App 211, 52 P.3d 451	1
<u>State v. Schofield</u> , 2002 UT 132, 63 P.3d 667	2
<u>State v. Todd</u> , 2004 UT App 266, 98 P.3d 46, <u>cert. granted</u> , 109 P.3d 804	6
<u>State v. Wright</u> , 904 P.2d 1101 (Utah Ct. App. 1995)	7, 8, 9

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. Const. amend. V	2, 11
----------------------------	-------

	<u>Page</u>
Utah Const. art. I, § 12	2, 11
Utah Code Ann. § 76-3-401 (2003)	2, 12, 13, 14
Utah Code Ann. § 76-3-405 (1990)	8
Utah Code Ann. § 76-6-202 (2003)	2
Utah Code Ann. § 76-6-404 (2003)	1, 2, 3
Utah Code Ann. § 77-1-6 (2003)	2, 11, 12
Utah Code Ann. § 77-18-1 (2003)	2, 6, 10, 11, 13
Utah Code Ann. § 78-2a-3 (2002)	1
Utah R. Crim. P. 30	10
Utah R. Evid. 201	3, 13

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 DAVID SCOTT ANDERSON, : Case No. 20041095-CA
 :
 Defendant/Appellant. :

JURISDICTIONAL STATEMENT

Appellant/Defendant David Scott Anderson ("Mr. Anderson" or "Appellant") appeals from a sentence on a final judgment of conviction for Theft, a third degree felony, in violation of Utah Code Ann. § 76-6-404 (2003), entered by the Honorable Robin W. Reese, Third District Court, Salt Lake County, Utah. This Court has jurisdiction over criminal convictions other than first degree felonies. Utah Code Ann. § 78-2a-3(e) (2002). A copy of the judgment is in Addendum A.

STATEMENT OF THE ISSUE, STANDARD OF REVIEW, PRESERVATION

Issue: Where a trial judge sentences a defendant for a single criminal offense, does another trial judge have jurisdiction and/or authority to amend to a harsher sentence at the Order to Show Cause hearing?

Standard of Review: Although sentencing decisions are generally reviewed for an abuse of discretion (State v. Perez, 2002 UT App 211, ¶25, 52 P.3d 451), this issue

involves an issue of statutory construction and jurisdiction which are questions of law .

See State v. Schofield, 2002 UT 132, ¶6, 63 P.3d 667.

Preservation. This issue was preserved below. R. 55:18-19.

TEXT OF RELEVANT STATUTES AND CONSTITUTIONAL PROVISIONS

The text of the following statutes and constitutional provisions are in

Addendum B:

Utah Code Ann. § 77-1-6 (2003);
Utah Code Ann. § 77-18-1 (2003);
Utah Code Ann. § 76-3-401 (2003);
U.S. Const. amend. V;
Utah Const. art. I, §12.

STATEMENT OF THE CASE

On January 15, 2003, the state charged Mr. Anderson by Information with Theft, a first degree felony, in violation of Utah Code Ann. § 76-6-404 (2003) and Burglary, a second degree felony, in violation of Utah Code Ann. § 76-6-202 (2003). R. 2-3. On December 4, 2003, Mr. Anderson entered a guilty plea to the state's amended charges of Theft a third degree felony and dismissal of the Burglary charge. R. 66; 55:1, 6, 9. Judge Noel sentenced Mr. Anderson to an indeterminate term not to exceed five years in the Utah State Prison. R. 66; 55:14-15. The prison term was suspended and Mr. Anderson was placed on probation for 18 months to be supervised by Adult Probation and Parole ("AP&P"). R. 67; 55:14-15. Mr. Anderson was not required to pay a fine. R. 67.

On August 16, 2004, Mr. Anderson pled guilty in another case to two counts of Aggravated Robbery, first degree felonies in front of Judge Atherton. See Addendum C: District Court Docket in Case No. 041901010. On October 4, 2004, Judge Atherton sentenced Mr. Anderson to two indeterminate terms of not less than six years and which may be for life in the Utah State Prison. See Addendum D: Judgment in Case No. 041901010.¹ Judge Atherton ordered that the commitments run concurrently to each other. See id.

On December 6, 2004, an order to show cause hearing was held before Judge Robin Reese who had been assigned this case from Judge Noel. R. 42; 55:17. Judge Reese ordered Mr. Anderson's probation revoked and imposed his suspended prison sentence but added that the term was to run consecutively with the aggravated robbery charges for which Mr. Anderson was also serving time. R. 42-43; 55:19. Mr. Anderson timely appealed. R. 45-46.

STATEMENT OF THE FACTS

Mr. Anderson pled guilty in this case in front of Judge Frank G. Noel to an amended charge of Theft, a third degree felony, in violation of Utah Code Ann. § 76-6-404. R. 66; 55:1, 6, 9. Judge Noel sentence Mr. Anderson to an indeterminate term not

¹Because Judge Atherton's sentencing determination in the intervening conviction, case no. 041901010, significantly impacts the decision in this case as to who had jurisdiction and authority to sentence Mr. Anderson to consecutive terms, Mr. Anderson asks this Court to take judicial notice under Utah Rules of Evidence 201 of the trial court docket in Addendum C and judgment in Addendum D.

to exceed five years in the Utah State Prison. R. 66; 55:14-15. The prison term was suspended and Mr. Anderson was placed on probation for 18 months to be supervised by Adult Probation and Parole. R. 67; 55:14-15. Judge Noel never signed the order of sentence, judgment and conviction entered into the record until appellate counsel requested a copy on May 31, 2005. See Supplemental Record.

On August 16, 2004, Mr. Anderson subsequently pled guilty to two counts of Aggravated Robbery, first degree felonies in front of Judge Atherton. See Addendum C. Judge Atherton ordered AP&P to prepare a presentence report. See id. Judge Atherton sentenced Mr. Anderson to two indeterminate terms of not less than six years and which may be for life in the Utah State Prison. See Addendum D. The trial court ordered that the commitments run concurrently to each other, that Mr. Anderson be given credit for 239 days served and recommended a mental health evaluation. See id.

On December 6, 2004, an order to show cause hearing was held in this case. The case was reassigned to Judge Reese to determine at the order to show cause hearing whether Mr. Anderson had violated his probation. R. 42; 55:17. Mr. Anderson admitted that he had violated his probation by being charged with aggravated robbery and having possessed a firearm without written authorization. R. 31; 55:17, 18. Judge Reese revoked Mr. Anderson's probation and then in regard to imposition of the original sentence stated "I guess the question is concurrent or consecutive." R. 55:18. Defense counsel pointed out that Judge Atherton had already sentenced Mr. Anderson to

concurrent terms on the aggravated robbery charges after the original sentence was imposed in the current case and that the trial court could now only impose the original prison term ordered. R. 55:19. Judge Reese instead ordered Mr. Anderson's suspended prison sentence of zero to five to run consecutively to the aggravated robbery charges Judge Atherton had previously sentenced Mr. Anderson. R. 42-43; 55:19. Mr. Anderson objected. R. 55:19. This appeal follows.

SUMMARY OF THE ARGUMENT

Once a trial court enters an order of judgment into the record and acts upon it, the sentence becomes final. After the order in this case became final, the trial court's authority and jurisdiction continued only over the defendant's probation terms. The trial court did not retain jurisdiction or authority over the case to increase the sentence originally imposed. The only jurisdiction and authority a trial court has at an order to show cause hearing is to revoke, modify, continue, or order the entire probation term to start over. In this case, the trial court erred in amending Mr. Anderson's sentence and ordering it to be served consecutively to a sentence imposed by a different judge in an intervening case. The trial court's error violated Mr. Anderson's constitutional and statutory rights against double jeopardy. Even if the trial court did have the authority to amend Mr. Anderson's sentence to be served consecutively to the other sentences imposed, it abused its discretion when it failed to consider the statutory factors necessary for ordering a consecutive sentence.

ARGUMENT

POINT. WHERE A TRIAL COURT HAS ACTED ON ITS ORDER OF JUDGMENT AND ENTERED IT INTO THE RECORD, THE COURT UPON REVOKING PROBATION CANNOT INCREASE THE SENTENCE ORIGINALLY IMPOSED.

While a trial court has "continuing jurisdiction over all probationers," until the probation term is completed, it is without jurisdiction or authority once it acts on an order of judgment and sentence from amending the original sentence imposed upon revocation of probation. See Utah Code Ann. 77-18-1 (2) (b) (iii) (2003). In this case, the trial court erred after it revoked Mr. Anderson's probation and ordered the original sentence imposed to be served consecutively to a sentence imposed by a different judge in an intervening case. The trial court's error violated Mr. Anderson's constitutional and statutory rights against double jeopardy.

"In a Utah criminal case, a final judgment occurs when the trial court enters the written judgment of conviction, including the sentence, into the record." State v. Todd, 2004 UT App 266, ¶10 n.1, 98 P.3d 46, cert. granted, 109 P.3d 804. After entering a valid final judgment of conviction, the trial court loses jurisdiction to amend the sentence. See State v. Montoya, 825 P.2d 676, 679 (Utah Ct. App. 1991) ("Once a court imposes a valid sentence, it loses subject matter jurisdiction over the case."). In this case, on December 5, 2003, Judge Noel announced a suspended sentence on Mr. Anderson and placed him on probation for 18 months. R. 66. The trial court reduced the sentence to writing and entered it into the record, on December 5, 2003, implementing the

sentence announced, and Mr. Anderson's probation commenced. R. 66.

Although the court reduced the sentence to a written judgment and implemented that judgment, a signed judgment was inadvertently not entered until May 31, 2005 after appellate counsel requested a copy of the signed judgment. See Supplemental Record. Such a scenario is fundamentally different than State v. Curry, 814 P.2d 1150 (Utah Ct. App. 1991) and State v. Wright, 904 P.2d 1101 (Utah Ct. App. 1995) where the trial court only orally announced sentence and that it would not be making the judgment final by signing it until it had considered further evidence. Moreover, since the sentence had been implemented and an order to show cause based on the orders in the judgment was ultimately held, the judgment was entered. The circumstances in this case are distinguishable from Curry and Wright where the record established that the trial court had not imposed a final sentence.

In Curry, the defendant pled guilty to a second degree felony and a third degree felony with the State recommendation that the sentences be served concurrently. 814 P.2d at 1150. On May 18, 1990, the trial court ordered sentences of one to fifteen years for the second degree felony and zero to five on the third degree felony to be served concurrently with one another. Id. The defendant then sought to include additional information for the court's consideration in sentencing and "moved the court to set-aside the sentence and order a ninety-day evaluation." Id. The court held a hearing on May 23, 1990, on the defendant's motion and filed a minute entry which stated "'1. THE

COURT WILL NOT SIGN THE JUDGMENT, SENTENCE (COMMITMENT) THAT WAS ORDERED ON MAY 18, 1990. 2. THE DEFENDANT IS ORDERED TO COMPLETE A 90 DAY EVALUATION AT THE UTAH STATE PRISON. THE SENTENCE IS CONTINUED TO AUGUST 31, 1990 at 10:30 AM.'" Id. (emphasis in original). On September 7, 1990, after the court had received the evaluation ordered, it "sentenced defendant to the same prison terms but ordered that they be served consecutively." Id. This Court held that the trial court's subsequent imposition of a consecutive sentence did not violate Utah Code Ann. §76-3-405 (1990) because the trial court's "oral statement . . . regarding defendant's sentence was not reduced to writing" until September 7th, therefore, the sentence was not "'set aside'" within the meaning of that statute. Id. at 1151.

Similarly, in Wright, the defendant pled guilty to attempted possession of an incendiary device and the trial court ordered a presentence report, setting sentencing for June 20. 904 P.2d at 1102. Sentencing was continued until July 11, 1994, when AP&P failed to prepare the presentence report. Id. At the July 11th sentencing, the presentence report was still not complete but "defense counsel urged the court to proceed with sentencing." Id.

The trial court announced from the bench that it would sentence Wright to zero to five years in state prison, but that it would suspend the prison term pending Wright's successful completion of a thirty-six month probationary period. [However, a]t a hearing held one week later, July 18, 1994, the trial court announced that it would not sign the proposed commitment order until it had a chance to review the presentence report from AP&P. The trial

court stated, "There is no judgment, there is no sentence until I sign those papers."

Id. (emphasis added).

At the August 1 hearing defense counsel "proffered mental health information for the trial court to consider in sentencing Wright." Id. At the August 29 hearing, after reviewing the presentence report, the trial court sentenced defendant to zero to five years in state prison, with credit for time served. Id. This time, however, the trial court did not grant the defendant probation. Id. This Court determined that this defendant like the one in Curry "sought to include in the presentence report additional information for the trial court's consideration after the oral pronouncement of sentence, but also after the trial court had indicated its intent to modify the originally announced sentence." Id. In affirming the trial court, this Court held that since the trial court's oral statement of sentencing had not been reduced to writing, the sentence was not entered until the time it was "reduced to writing and signed." Id.

Unlike the trial court in Curry and Wright, the trial court in this case did reduce Mr. Anderson's sentence to writing and entered it into the record. R. 66. In addition, unlike the trial courts in those cases, the trial court in this case did not state on the record that it was refusing to sign the order pending receiving further evidence. Nor did it indicate any intention of modifying the sentence in the future. Finally, unlike Curry and Wright, Mr. Anderson's sentence commenced on the date it was announced and Mr. Anderson began serving the sentence on that date. Once a trial court enters an order of

judgment into the record and a defendant begins serving a sentence, that sentence becomes final. This insures that such clerical omissions do not affect the substantial rights of a defendant or undermine the justice system. See Utah R. Crim. P. 30. Therefore, once the trial court entered a written order of judgment into the record, and acted on it, the order was final and the trial court lost the authority to do anything other than to impose the original sentence entered upon revocation of Mr. Anderson's probation. See Ex parte Lange, 85 U.S. (18 Wall.) 163 (1873); Utah Code Ann. §77-18-1 (12) (e) (iii).

"When interpreting a statute, this [C]ourt looks first to the statute's plain language to determine the Legislature's intent and purpose" . . . reading "'the plain language of the statute as a whole'" State Farm Fire & Casualty Co. v. Sundance Dev. Corp., 2003 UT App 367, ¶4, 78 P.3d 995 (citations omitted). The court's purpose when interpreting statutory language is "'to render all parts [of the statute] relevant and meaningful,' and . . . presume the legislature use[d] each term advisedly and . . . according to its ordinary meaning." State v. Maestas, 2002 UT 123, ¶52, 63 P.3d 621 (alterations in original) (citations omitted). In doing so, the court seeks to "'avoid interpretations that will render portions of a statute superfluous or inoperative.'" Id. (citations omitted).

Utah Code Ann. § 77-18-1 grants trial courts the authority after an order to show cause hearing to order "probation revoked, modified, continued, or that the entire probation term commence anew." Id. at § 77-18-1 (12) (e) (ii). If the trial court

determines that probation should be revoked then the statute only allows the trial court the authority to either sentence the defendant if he has not previously been sentenced or execute the sentence previously imposed. Id. at (12) (e) (iii) ("If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed."). In this case, Judge Noel had already entered a sentence against Mr. Anderson; therefore, the trial court was only left with the authority to execute the sentence previously imposed. Instead, the trial court at the order to show cause hearing amended the original sentence and ordered it to run consecutively with the other sentences Mr. Anderson was ordered to serve in another case by Judge Atherton. Only Judge Atherton, who sentenced Mr. Anderson after Judge Noel sentenced him in this case, had jurisdiction and authority to order consecutive sentencing in the aggravated robbery case based on Mr. Anderson's past and present criminal conduct. The trial court's subsequent consecutive sentence at the order to show cause hearing in this case constitutes a more severe punishment than originally ordered by Judge Noel and violates Mr. Anderson constitutional and statutory protections against double jeopardy. See U.S. Const. amend. V; Utah Const. art. I, § 12; Utah Code Ann. § 77-1-6 (2) (a) (2003).

The Fifth Amendment guarantee against double jeopardy, applicable to the States through the Fourteenth Amendment, protects individuals from multiple punishments for the same offense. U.S. Const. amend. V ("nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb."); Utah Const. art. I, § 12 ("nor shall

any person be twice put in jeopardy for the same offense."); Utah Code Ann. § 77-1-6 (2) (a) ("No person shall be put twice in jeopardy for the same offense."). "If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offence. And . . . there has never been any doubt of [this rule's] entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offense." North Carolina v. Pearce, 395 U.S. 711, 717 (1969) (quoting Ex parte Lange, 85 U.S. (18 Wall.) 163 (1873)). The United States Supreme Court determined long ago that double jeopardy is violated when a trial court increases a sentence after a defendant has commenced to serve it. Ex parte Lange, 85 U.S. at 176. "The Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it." Id. at 173. Therefore, the trial court violated double jeopardy in this case where it entered a judgment and it increased Mr. Anderson's sentence after he had already commenced serving it. The trial court was without jurisdiction or authority under either the constitution or statute to run Mr. Anderson's original sentence consecutively to the intervening convictions.

Utah Code Ann. § 76-3-401 (2) (2003) states that "[i]n determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant." Id. In determining whether to sentence

Mr. Anderson to consecutive terms for his aggravated robbery convictions, Judge Atherton followed section 76-3-401(2) and considered all of the required factors.² After doing so, Judge Atherton ordered Mr. Anderson's sentences to be served concurrently, recommended credit for 239 days served, and recommended he receive a mental health evaluation and treatment. See Addendum D. In contrast, the only jurisdiction the trial court had at the order to show cause hearing was to "revoke[], modif[y], continue[], or [order] the entire probation term commence anew," and if probation was revoked to execute the previous sentence imposed. Utah Code Ann. § 77-18-1 (e) (ii), (iii). Even if the trial judge had the ability to order the previous sentence imposed to be served consecutively, the trial court abused its discretion in this case by not considering the necessary statutory factors. See State v. McCovey, 803 P.2d 1234, 1235 (Utah 1990) ("An abuse of discretion results when the judge 'fails to consider all legally relevant [sentencing] factors.'") (quoting State v. Gibbons, 779 P.2d 1133, 1135 (Utah 1989) (footnote omitted)); R. 55:19. Instead the trial court stated:

I'll impose the indeterminate term of zero to five years, Mr. Anderson, and just looking at the kinds of charges that you've admitted committ[ing] while on probation it seems that it would be just in my judgment to run them consecutively, run this charge consecutively with the others. The

²Because Judge Atherton was the only judge who had jurisdiction and authority to sentence Mr. Anderson to consecutive terms and considered all of the statutory elements, Mr. Anderson asks this Court to take judicial notice under Utah Rules of Evidence 201 of the video tape sentencing hearing in case number 041901010 FS held on October 4, 2004.

others are serious violent charges apparently involving firearms, so I'll impose this to run consecutively.

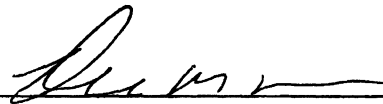
R. 55:19.

While the trial court noted the gravity and circumstances of the offense, it failed to consider Anderson's history, character or rehabilitative needs when it imposed the consecutive sentence. See State v. Helms, 2002 UT 12, ¶15, 40 P.3d 626 (Trial court abuses its discretion when it fails to give "adequate weight to certain mitigating circumstances." (quoting State v. Galli, 967 P.2d 930, 938 (Utah 1998)). Therefore, even if the trial court had the ability to impose Mr. Anderson's prison term to be served consecutively, it abused its discretion in failing to consider all relevant factors as required by Utah Code Ann. § 76-3-401 (2).

CONCLUSION

The Appellant, Mr. Anderson, respectfully requests this Court to reverse the trial court's imposition of his original sentence as consecutive to the aggravated robbery convictions he is serving in another case.

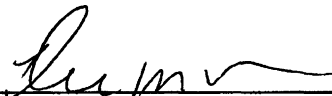
SUBMITTED this 15th day of July, 2005.



DEBRA M. NELSON
C. BEVAN CORRY
Attorneys for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, DEBRA M. NELSON, hereby certify that I have caused to be hand-delivered the original and seven copies of the foregoing to the Utah Court of Appeals, 450 South State, 5th Floor, P.O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 15th day of July, 2005.



DEBRA M. NELSON

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this _____ day of July, 2005.

ADDENDA

ADDENDUM A

3RD DISTRICT COURT - SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	ORDER TO SHOW CAUSE
	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 031900326 FS
	:	
DAVID SCOTT ANDERSON,	:	Judge: ROBIN W. REESE
Defendant.	:	Date: December 6, 2004

PRESENT

Clerk: marlened

Prosecutor: CRANDALL, KIMBERLY A

Defendant

Defendant's Attorney(s): CORRY, C. BEVAN

Agency: Adult Probation & Parole

DEFENDANT INFORMATION

Date of birth: October 12, 1984

Video

Tape Number: TAPE Tape Count: 10:21

CHARGES

1. THEFT (amended) - 3rd Degree
Felony

Plea: Guilty - Disposition: 12/04/2003 Guilty

HEARING

DEFT ADMITTS ALLEGATIONS 2 - 3

DENIES ALLEGATION 1 - C/O STRICKEN ON STATE MOTION

COURT ORDERED PROBATION REVOKED, DEFT TO SERVE PRISON TERM

Case No: 031900326
Date: Dec 06, 2004

SENTENCE PRISON


Based on the defendant's conviction of THEFT a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

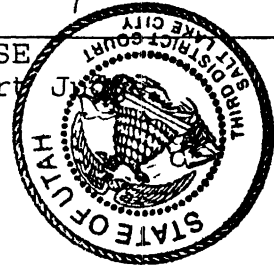
To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

COURT ORDERED TO RUN CONSECUTIVE

Dated this 6 day of DEC, 2004.


ROBIN W. REESE
District Court Judge



ADDENDUM B

77-1-6. Rights of defendant.

- (1) In criminal prosecutions the defendant is entitled:
 - (a) To appear in person and defend in person or by counsel;
 - (b) To receive a copy of the accusation filed against him;
 - (c) To testify in his own behalf;
 - (d) To be confronted by the witnesses against him;
 - (e) To have compulsory process to insure the attendance of witnesses in his behalf;
 - (f) To a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;
 - (g) To the right of appeal in all cases; and
 - (h) To be admitted to bail in accordance with provisions of law, or be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.
- (2) In addition:
 - (a) No person shall be put twice in jeopardy for the same offense;
 - (b) No accused person shall, before final judgment, be compelled to advance money or fees to secure rights guaranteed by the Constitution or the laws of Utah, or to pay the costs of those rights when received;
 - (c) No person shall be compelled to give evidence against himself;
 - (d) A wife shall not be compelled to testify against her husband nor a husband against his wife; and
 - (e) No person shall be convicted unless by verdict of a jury, or upon a plea of guilty or no contest, or upon a judgment of a court when trial by jury has been waived or, in case of an infraction, upon a judgment by a magistrate.

77-18-1. Suspension of sentence — Pleas held in abeyance — Probation — Supervision — Presentence investigation — Standards — Confidentiality — Terms and conditions — Termination, revocation, modification, or extension — Hearings — Electronic monitoring.

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

- (b) (i) The legal custody of all probationers under the supervision of the department is with the department.
- (ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.
- (iii) The court has continuing jurisdiction over all probationers.
- (3) (a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:
 - (i) the type of offense;
 - (ii) the demand for services;
 - (iii) the availability of agency resources
 - (iv) the public safety; and
 - (v) other criteria established by the department to determine what level of services shall be provided.
- (b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.
- (c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.
- (d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.
- (e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.
- (4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.
- (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.
- (b) The presentence investigation report shall include a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family.
- (c) The presentence investigation report shall include a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act.
- (d) The contents of the presentence investigation report, including any diagnostic evaluation report ordered by the court under Section 76-3-404, are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.
- (6) (a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to

sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(iii) provide for the support of others for whose support he is legally liable;

(iv) participate in available treatment programs;

(v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(vi) serve a term of home confinement, which may include the use of electronic monitoring;

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 78-11-20.7;

(viii) pay for the costs of investigation, probation, and treatment services;

(ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

(x) comply with other terms and conditions the court considers appropriate; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10) (a) (i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii) (A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable.

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why his failure to pay should not be treated as contempt of court.

(b) (i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11) (a) (i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

- (ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for his arrest or a copy of the affidavit and an order to show cause why his probation should not be revoked, modified, or extended.
- (c) (i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.
 - (ii) The defendant shall show good cause for a continuance.
 - (iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent.
 - (iv) The order shall also inform the defendant of a right to present evidence.
- (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.
 - (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.
 - (iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.
 - (iv) The defendant may call witnesses, appear and speak in his own behalf, and present evidence.
- (e) (i) After the hearing the court shall make findings of fact.
 - (ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.
 - (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.
- (13) The court may order the defendant to commit himself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or his designee has certified to the court that:
 - (a) the defendant is appropriate for and can benefit from treatment at the state hospital;
 - (b) treatment space at the hospital is available for the defendant; and
 - (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).
- (14) Presentence investigation reports, including presentence diagnostic evaluations, are classified protected in accordance with Title 63, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63-2-403 and 63-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:
 - (a) ordered by the court pursuant to Subsection 63-2-202(7);
 - (b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;
 - (c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

15) (a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

16) (a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

76-3-401. Concurrent or consecutive sentences — Limitations — Definition.

(1) A court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. The court shall state on the record and shall indicate in the order of judgment and commitment:

(a) if the sentences imposed are to run concurrently or consecutively to each other; and

(b) if the sentences before the court are to run concurrently or consecutively with any other sentences the defendant is already serving.

(2) In determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.

(3) The court shall order that sentences for state offenses run consecutively if the later offense is committed while the defendant is imprisoned or on parole, unless the court finds and states on the record that consecutive sentencing would be inappropriate.

(4) If a written order of commitment does not clearly state whether the sentences are to run consecutively or concurrently, the Board of Pardons and Parole shall request clarification from the court. Upon receipt of the request, the court shall enter a clarified order of commitment stating whether the sentences are to run consecutively or concurrently.

(5) A court may impose consecutive sentences for offenses arising out of a single criminal episode as defined in Section 76-1-401.

(6) (a) If a court imposes consecutive sentences, the aggregate maximum of all sentences imposed may not exceed 30 years imprisonment, except as provided under Subsection (6)(b).

(b) The limitation under Subsection (6)(a) does not apply if:

(i) an offense for which the defendant is sentenced authorizes the death penalty or a maximum sentence of life imprisonment; or

(ii) the defendant is convicted of an additional offense based on conduct which occurs after his initial sentence or sentences are imposed.

- (7) The limitation in Subsection (6)(a) applies if a defendant:
- (a) is sentenced at the same time for more than one offense;
 - (b) is sentenced at different times for one or more offenses, all of which were committed prior to imposition of the defendant's initial sentence; or
 - (c) has already been sentenced by a court of this state other than the present sentencing court or by a court of another state or federal jurisdiction, and the conduct giving rise to the present offense did not occur after his initial sentencing by any other court.
- (8) When the limitation of Subsection (6)(a) applies, determining the effect of consecutive sentences and the manner in which they shall be served, the Board of Pardons and Parole shall treat the defendant as though he has been committed for a single term that consists of the aggregate of the validly imposed prison terms as follows:
- (a) if the aggregate maximum term exceeds the 30-year limitation, the maximum sentence is considered to be 30 years; and
 - (b) when indeterminate sentences run consecutively, the minimum term, if any, constitutes the aggregate of the validly imposed minimum terms.
- (9) When a sentence is imposed or sentences are imposed to run concurrently with the other or with a sentence presently being served, the term that provides the longer remaining imprisonment constitutes the time to be served.
- (10) This section may not be construed to restrict the number or length of individual consecutive sentences that may be imposed or to affect the validity of any sentence so imposed, but only to limit the length of sentences actually served under the commitments.
- (11) This section may not be construed to limit the authority of a court to impose consecutive sentences in misdemeanor cases.
- (12) As used in this section, "imprisoned" means sentenced and committed to a secure correctional facility as defined in Section 64-13-1, the sentence has not been terminated or voided, and the person is not on parole, regardless of where the person is located.

CONSTITUTION OF THE UNITED STATES

AMENDMENT V

[Criminal actions — Provisions concerning — Due process of law and just compensation clauses.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTION OF UTAH

Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

ADDENDUM C

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. DAVID SCOTT ANDERSON

CASE NUMBER 041901010 State Felony

Defendants TIMOTHY J AUKUSITINO, DAVID SCOTT ANDERSON, RYAN
DANIEL BINKS, JOSHUA FUNGALEI LOLOHEA, are linked.

CHARGES

Charge 1 - 76-6-302 - AGGRAVATED ROBBERY
1st Degree Felony Plea: August 16, 2004 Guilty
Disposition: August 16, 2004 Guilty
Charge 2 - 76-6-302 - AGGRAVATED ROBBERY
1st Degree Felony Plea: August 16, 2004 Guilty
Disposition: August 16, 2004 Guilty
Charge 3 - 76-6-302 - AGGRAVATED ROBBERY
1st Degree Felony Plea: May 10, 2004 Not Guilty
Disposition: August 16, 2004 Dismissed
Charge 4 - 76-6-302 - AGGRAVATED ROBBERY
1st Degree Felony Plea: May 10, 2004 Not Guilty
Disposition: August 16, 2004 Dismissed
Charge 5 - 76-6-302 - AGGRAVATED ROBBERY
1st Degree Felony Plea: May 10, 2004 Not Guilty
Disposition: August 16, 2004 Dismissed
Charge 6 - 76-6-302 - AGGRAVATED ROBBERY
1st Degree Felony Plea: May 10, 2004 Not Guilty
Disposition: August 16, 2004 Dismissed
Charge 7 - 76-8-306 - OBSTRUCT JUSTICE
1st Degree Felony Plea: May 10, 2004 Not Guilty
Disposition: August 16, 2004 Dismissed

CURRENT ASSIGNED JUDGE
JUDITH S ATHERTON

PARTIES

Defendant - DAVID SCOTT ANDERSON
DRAPER, UT
Represented by: L. BRUCE LARSEN

Plaintiff - STATE OF UTAH

Also Known As - " D-BOY "

DEFENDANT INFORMATION

Defendant Name: DAVID SCOTT ANDERSON
Offense tracking number: 16109357

CASE NUMBER 041901010 State Felony

Date of Birth: October 12, 1984
Jail Booking Number:
Law Enforcement Agency: MIDVALE CITY POLICE
LEA Case Number: 04-003095
Prosecuting Agency: SALT LAKE COUNTY
Agency Case Number: 04002456
Sheriff Office Number: 0269968
Violation Date: February 08, 2004 6885 SOUTH STATE STREET

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	325.50
	Amount Paid:	325.50
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: REPORTER FEES

	Amount Due:	325.50
	Amount Paid:	325.50
	Amount Credit:	0.00
	Balance:	0.00

CASE NOTE

DA 04002456

PROCEEDINGS

02-12-04 Judge MAUGHAN assigned.
02-12-04 Note: CASE FILED BY DET. ARGUETA OF MIDVALE POLICE DEFT IN JAIL
WILL FAX WARRANT TO THE JAIL
02-12-04 Case filed by laniv
02-12-04 Filed: Information
02-17-04 Note: Jim from Pre-Trial Services notified clerk defendant's
Attorney Bruce Larsen request initial appearance of 2/19/04
02-17-04 INITIAL APPEARANCE scheduled on February 19, 2004 at 09:00 AM
in Arraignment Jail with Judge ARRAIGNMENT.
02-17-04 Note: Judge reassigned from criminal filing screen due to new
procedure for roll calls.
02-17-04 Judge ATHERTON assigned.
02-19-04 Minute Entry - Minutes for Initial Appearance
Judge: ANN BOYDEN
PRESENT
Clerk: lynettm
Prosecutor: CHRISTENSEN, VIRGINIA O
Defendant

Video

Tape Number: DISK 43 Tape Count: 93232

INITIAL APPEARANCE

The Information is read.
Advised of charges and penalties.
The defendant is advised of right to counsel.
Defendant waives time for sentence.
ROLL CALL is scheduled.

Date: 02/26/2004

Time: 02:00 p.m.

Location: To Be Determined

Third District Court

450 South State

Salt Lake City, UT 84111

Before Judge: PAUL G. MAUGHAN

02-19-04 ROLL CALL scheduled on February 26, 2004 at 02:00 PM in To Be Determined with Judge MAUGHAN.

02-19-04 Filed: Notice of Appearance of Counsel filed by L Bruce Larsen, Attorney for Defendant

02-19-04 Filed: Request for Discovery filed by L Bruce Larsen, Attorney for Defendant

02-23-04 Note: Bail remain \$250,007

02-26-04 Preliminary Hearing scheduled on March 11, 2004 at 09:00 AM in Third Floor - W37 with Judge MAUGHAN.

02-26-04 Minute Entry - Minutes for Roll Call

Judge: PAUL G. MAUGHAN

PRESENT

Clerk: terryb

Prosecutor: JOHNSON, JOHN K

Defendant

Defendant's Attorney(s): LARSEN, L. BRUCE

Video

Tape Count: off record

HEARING

COUNT: off record

Court Orders Case set for Preliminary Hearing
PRELIMINARY HEARING is scheduled.

Date: 03/25/2004

Time: 02:00 p.m.

Location: Third Floor - W39

Before Judge: BURTON, MICHAEL K.

02-26-04 Preliminary Hearing Cancelled scheduled for: 3/11/04

Reason: Counsel's request.

02-26-04 Preliminary Hearing scheduled on March 25, 2004 at 02:00 PM in Third Floor - W39 with Judge BURTON.

02-26-04 Note: ROLL CALL minutes modified.

03-04-04 Filed: FIRST SUPPLEMENTAL RESPONSE TO REQUEST FOR DISCOVERY
03-25-04 Preliminary Hearing scheduled on April 01, 2004 at 02:00 PM in
Fourth Floor - S41 with Judge MCCLEVE.
03-25-04 Minute Entry - Minutes for Preliminary Hearing
Judge: MICHAEL K. BURTON
PRESENT
Clerk: marcyt
Reporter: SCHULTZ, KATHLEEN
Prosecutor: MEISTER, VINCENT B
Defendant
Defendant's Attorney(s): LARSEN, L. BRUCE

Video

HEARING

The State's motion to continue is granted.
PRELIMINARY HEARING is scheduled.

Date: 04/01/2004

Time: 02:00 p.m.

Location: Fourth Floor - S41

Before Judge: MCCLEVE, SHEILA K.

04-01-04 Preliminary Hearing scheduled on April 22, 2004 at 02:00 PM in
Fourth Floor - W46 with Judge LINDBERG.

04-01-04 Minute Entry - Minutes for Preliminary Hearing
Judge: SHEILA K. MCCLEVE

PRESENT

Clerk: lauraj

Reporter: WARNICK, SUZANNE

Prosecutor: MEISTER, VINCENT B

Defendant

Defendant's Attorney(s): LARSEN, L. BRUCE

Video

Tape Number: 4/1/04 Tape Count: 2:26:28

HEARING

C/O SET FOR PRELIM 4/22/04 AT 2PM BEFORE JUDGE LINDBERG. COUNSELS
ADVISED THE COURT THAT IS WILL BE A 3-HOUR SETTING WITH 8 WITNESSES
AND 4 CO-DEFTS.

04-07-04 Filed: letter from the defendant

04-22-04 Note: Case Bound Over

04-22-04 ARRAIGNMENT scheduled on May 10, 2004 at 08:30 AM in Fourth
Floor - S44 with Judge ATHERTON.

04-22-04 Note: INCOURT NOTE minutes modified.

04-22-04 Minute Entry - Minutes for Preliminary Hearing
Judge: DENISE P LINDBERG
Clerk: valerieb

Prosecutor: MEISTER, VINCENT B
Defendant's Attorney(s): LARSEN, L. BRUCE

HEARING

TAPE: 4/22/04 COUNT: 2:55
witness' sworn
COUNT: 2:56
on the motion of the State, court ordered witnesses excluded
COUNT: 2:56
States witness Jose Argeta sworn and examined
COUNT: 3:02
States exhibit #9,10 & 11 MOA
COUNT: 3:04
State's exhibits 1 - 7 MOA
COUNT: 3:14
State's exhibit 8 <OA
COUNT: 3:17
Cross by Larsen
COUNT: 3:20
Cross by O'Connell
COUNT: 3:20
witness excused
COUNT: 3:21
State's witness Ryan Binks previously sworn and examined
COUNT: 4:13
Cross by Larsen
COUNT: 4:13
recess
COUNT: 4:21
in session
COUNT: 4:26
Cross by O'Connell
COUNT: 4:33
cross by Simms
COUNT: 4:40
state rests
COUNT: 4:40
all defendant's advised of their rights and waive the right to
testify
COUNT: 4:41
the court finds probable cause to bind this matter over
the defendant was transported from the ADC
CASE BOUNDOVER

Defendant waived preliminary hearing, State consenting thereto.
This case is bound over. An Arraignment hearing has been set on
5/10/04 at 8:30 AM in courtroom S44 before Judge JUDITH S ATHERTON.

05-06-04 Filed: LETTER TO COURT FROM DEFENDANT

05-10-04 Minute Entry - Minutes for Arraignment

Judge: JUDITH S ATHERTON
PRESENT
Clerk: lorip
Prosecutor: KNELL, BRADLEY J
Defendant
Defendant's Attorney(s): LARSEN, L. BRUCE

Video
Tape Number: video Tape Count: 9:08

ARRAIGNMENT

The Information is read.
Advised of rights and penalties.
Defendant is arraigned.
FINAL PRETRIAL CONFERENCE is scheduled.

Date: 08/16/2004
Time: 08:30 a.m.
Location: Fourth Floor - S44
Third District Court
450 South State
SLC, UT 84114-1860

Before Judge: JUDITH S ATHERTON

JURY TRIAL.

Date: 08/24/2004
Time: 09:00 a.m.
Location: Fourth Floor - S44
Third District Court
450 South State
SLC, UT 84114-1860

Before Judge: JUDITH S ATHERTON

JURY TRIAL.

Date: 08/25/2004
Time: 09:00 a.m.
Location: Fourth Floor - S44
Third District Court
450 South State
SLC, UT 84114-1860

Before Judge: JUDITH S ATHERTON

JURY TRIAL.

Date: 08/26/2004
Time: 09:00 a.m.
Location: Fourth Floor - S44
Third District Court
450 South State

SLC, UT 84114-1860

Before Judge: JUDITH S ATHERTON

05-10-04 FINAL PRETRIAL CONFERENCE scheduled on August 16, 2004 at 08:30 AM in Fourth Floor - S44 with Judge ATHERTON.
05-10-04 JURY TRIAL scheduled on August 24, 2004 at 09:00 AM in Fourth Floor - S44 with Judge ATHERTON.
05-10-04 JURY TRIAL scheduled on August 25, 2004 at 09:00 AM in Fourth Floor - S44 with Judge ATHERTON.
05-10-04 JURY TRIAL scheduled on August 26, 2004 at 09:00 AM in Fourth Floor - S44 with Judge ATHERTON.
07-02-04 Filed: Transcript of preliminary hearing dated 4-22-04, Suzanne Warnick, Court Reporter
07-16-04 Filed: Third supplemental response to request for discovery
08-16-04 JURY TRIAL Cancelled.
Reason: Case has been settled.
08-16-04 SENTENCING scheduled on October 04, 2004 at 08:30 AM in Fourth Floor - S44 with Judge ATHERTON.
08-16-04 Charge 1 Disposition is Guilty
08-16-04 Charge 2 Disposition is Guilty
08-16-04 Charge 3 Disposition is Dismissed
08-16-04 Charge 4 Disposition is Dismissed
08-16-04 Charge 5 Disposition is Dismissed
08-16-04 Charge 6 Disposition is Dismissed
08-16-04 Charge 7 Disposition is Dismissed
08-16-04 Minute Entry - Minutes for Change of Plea
Judge: JUDITH S ATHERTON
PRESENT
Clerk: lorip
Prosecutor: KNELL, BRADLEY J
Defendant
Defendant's Attorney(s): LARSEN, L. BRUCE

Video

Tape Number: VIDEO Tape Count: 11:23

The Information is read.

Court advises defendant of rights and penalties.

A pre-sentence investigation was ordered.

The Judge orders Adult Probation & Parole to prepare a Pre-sentence report.

SENTENCING is scheduled.

Date: 10/04/2004

Time: 08:30 a.m.

Location: Fourth Floor - S44
Third District Court
450 South State
SLC, UT 84114-1860

Before Judge: JUDITH S ATHERTON

10-01-04 Filed: RECEIVED PSR FROM APAP

Printed: 06/16/05 09:30:43

Page 7

CASE NUMBER 041901010 State Felony

10-04-04 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITTEE

Judge: JUDITH S ATHERTON
PRESENT
Clerk: lorip
Prosecutor: KNELL, BRADLEY J
Defendant
Defendant's Attorney(s): LARSEN, L. BRUCE

Video
Tape Number: VIDEO Tape Count: 10:27

SENTENCE PRISON

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than six years and which may be life in the Utah State Prison.

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than six years and which may be life in the Utah State Prison.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

COMMITMENTS TO RUN CONCURRENT.
SENTENCE RECOMMENDATION NOTE

COURT RECOMMENDS DEFT RECEIVE CREDIT FOR 239 DAYS TIME SERVED.
COURT ALSO RECOMMENDS DEFT RECEIVE MENTAL HEALTH EVALUATION AND TREATMENT. RESTITUTION TO BE DETERMINED BY BOARD OF PARDONS.

10-13-04 Fee Account created	Total Due:	325.50
10-13-04 REPORTER FEES	Payment Received:	325.50
Note: REPORTER FEES		
05-04-05 Note: SENTENCE, JUDGMENT, COMMITMENT minutes modified.		

ADDENDUM D

3RD DISTRICT COURT - SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 041901010 FS
	:	
DAVID SCOTT ANDERSON,	:	Judge: JUDITH S ATHERTON
Defendant.	:	Date: October 4, 2004

PRESENT

Clerk: lorip

Prosecutor: KNELL, BRADLEY J

Defendant

Defendant's Attorney(s): LARSEN, L. BRUCE

DEFENDANT INFORMATION

Date of birth: October 12, 1984

Video

Tape Number: VIDEO Tape Count: 10:27

CHARGES

1. AGGRAVATED ROBBERY - 1st Degree Felony
Plea: Guilty - Disposition: 08/16/2004 Guilty
2. AGGRAVATED ROBBERY - 1st Degree Felony
Plea: Guilty - Disposition: 08/16/2004 Guilty

SENTENCE PRISON

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than six years and which may be life in the Utah State Prison.

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than six years and which may be life in the Utah State Prison.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the

Case No: 041901010
Date: Oct 04, 2004

defendant will be confined.


SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

COMMITMENTS TO RUN CONCURRENT.

SENTENCE RECOMMENDATION NOTE

COURT RECOMMENDS DEFT RECEIVE CREDIT FOR 239 DAYS TIME SERVED.
COURT ALSO RECOMMENDS DEFT RECEIVE MENTAL HEALTH EVALUATION AND
TREATMENT. RESTITUTION TO BE DETERMINED BY BOARD OF PARDONS.

Dated this 4 day of Oct, 2004.


JUDITH S. ATTERTON
District Court Judge
STAMP USED IN DIRECTION OF JUDGE
